DAVIS OIL CO. ET AL.

IBLA 77-258 Decided November 25, 1977

Appeal from decision of the Wyoming State Office, Bureau of Land Management, holding that noncompetitive oil and gas lease W-36656-A terminated automatically by operation of law for failure to pay rental timely.

Reversed and remanded.

1. Oil and Gas Leases: Rentals -- Oil and Gas Leases: Royalties -- Oil and Gas Leases: Termination

   Congress has provided that failure to pay annual rental timely for an oil and gas lease shall cause the lease to terminate automatically by operation of law under 30 U.S.C. § 188(b) (1970). An oil and gas lease is not deemed to have terminated for failure to pay rental timely where, because of misleading communications from the Geological Survey and the Bureau of Land Management, it appeared the lease was in a royalty status and the lessee did not have reason to know that the rental was due.

APPEARANCES: John Amen, Contracts Manager, Davis Oil Company, for appellants.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Davis Oil Company, McMoRan Exploration Company, and Dow Chemical U.S.A. have joined in appealing the March 23, 1977, decision of the Wyoming State Office, Bureau of Land Management (BLM), holding that noncompetitive oil and gas lease W-36656-A terminated, by operation of law under 30 U.S.C. § 188(b) (1970) for failure to pay annual rental on or before the anniversary date, November 1, 1976. Each appellant holds a 25-percent interest in the lease with the remaining 25 percent held by W. C. Partee who did not appear in the appeal.

A well was completed on the lease on March 4, 1975. In June 1975, the U.S. Geological Survey (Survey) informed BLM of the well completion and requested transfer of the lease account stating: "This office [of Survey] will continue to maintain the lease account subject to advance rental until the well status is determined." That same month, Survey informed appellants that "[d]iscovery of oil/gas has been made on this lease" and therefore the lease account had been transferred. In a postscript Survey stated: "This office will continue to maintain the lease account subject to advance rental until well status is determined. You will be advised when this occurs." Appellants subsequently submitted to Survey their 1975 rental payment on September 29, 1975.

Following the lease account transfer, Survey informed BLM in October 1975 that the land in lease W-36656-A had been included within the Hilight field undefined known geologic structure (KGS) as of March 4, 1975. BLM then notified appellants by letter dated October 29, 1975, that the lease account had been transferred to Survey "upon receipt of notification that a well had been completed," and that the land was now within a KGS. The letter also informed appellants that: "Should production cease and the lease account be returned to the jurisdiction of this office for advance rental payments, the annual rental will be due and payable at the rate of $ 2.00 per acre or fraction thereof, for the entire lease, containing 160.00 acres."

On March 3, 1977, Survey advised BLM that the well on appellants' lease was not capable of production and that the lease would not revert to a minimum royalty status. Survey also notified BLM that advance rental had not been received on or before November 1, 1976, the anniversary date of the lease. BLM then issued its decision.

Appellants do not dispute that they failed to pay the rental timely. However, they argue that the October 29, 1975, letter from BLM appeared to be the well status determination referred to by Survey in its June 1975 letter to appellants. They state that they therefore assumed their lease was in minimum royalty status.

After reviewing the case file, the Board requested supplementary information from appellant Davis Oil and from Survey. Appellant reemphasizes its argument that the October 29, 1975, letter caused their misconception that the lease was on minimum royalty status. They enclosed a copy of their computer records showing a minimum royalty status notation. Survey responded by stating that no determination was made, nor notification sent to the lessees or BLM, that the lease had changed from advance rental status to minimum royalty status. Survey included with its statement copies of monthly accounting advices to appellants showing no sales of oil except in December 1975.

For the reasons set out below, we conclude that appellants' oil and gas lease should not be deemed to have terminated by operation of law. Accordingly, we reverse the BLM State Office decision.

[1] An oil and gas lessee is obligated to pay advance annual rental for an oil and gas lease until notified otherwise. 30 U.S.C. § 226(d)(1970); The Polumbus Corp., 22 IBLA 270 (1975). An oil and gas lease is changed from rental status to royalty status when Survey determines that a discovery has been made on the lease, i.e., a well on the lease is capable of producing oil or gas in paying quantities. Minimum royalty is the minimum amount owed the United States for a lease on royalty status. 30 U.S.C. § 226(d); 43 CFR 3103.3-5.

Congress has provided that failure to pay annual rental on or before the anniversary date shall cause an oil and gas lease on which there is no well capable of producing oil or gas in paying quantities to "automatically terminate by operation of law." 30 U.S.C. § 188(b) (1970). This provision is only applicable when a lease is in a rental status, not a royalty status. In situations where an oil and gas lessee could not have known that rental was due, the lease does not terminate for failure to pay the rental timely. E.g., Odessa Natural Corp., 30 IBLA 28, (1977); The Polumbus Corp., supra, at 273-274 (1975); Husky Oil Co., 5 IBLA 7, 79 I.D. 17 (1972).

For example, in Odessa there was some question as to whether or not the lessee had been notified that its assignment of the producing lands in the lease had been approved by BLM and that therefore rental, rather than minimum royalty, was due on the remainder of the lease. The Board held that if the lessee was not notified of the assignment approval and the change of status from royalty back to rental, it could not have known rental was due and therefore the lease did not terminate for failure to pay rental timely.

In Polumbus, the same rule was applied against the appellant. In that case, the Board held that the appellant's belief that its lease was in royalty status was totally unfounded. The Board stated at 275: "There was no misrepresentation of the status of the lease by anyone authorized to act on behalf of the United States, and no concealment of any material fact." The Board concluded, in effect, that the United States is under no obligation to inform an oil and gas lessee that the status of his lease remains unchanged.

In the case before us, appellants received form letters from both Survey and BLM which were not appropriate for the situation existing on their lease. Survey's June 1975 form letter notified appellants that a discovery had been made on their lease but then qualified this in the postscript quoted above concerning continued payment of advance rental. Thus the letter contained inconsistent statements although the fact that well status had not been determined was made clear. However, the October 1975 form letter sent by

BLM was not qualified in any way to reflect that appellants' lease was in rental status. The BLM letter was couched in terms which assume the existence of a producing well on the lease. As quoted above, appellants were informed that "should production cease" and the lease account be returned to BLM "for advance rental payments," they would owe annual rental at the higher KGS rate. The letter does not explain why the higher rental will be due in the future but not immediately. If the lease is within a KGS, the higher KGS rental rate should be due beginning with the first lease year after the expiration of 30 days notice to the lessee. 43 CFR 3103.3-2(b)(1). Thus, the higher KGS rental was due for the lease year beginning November 1, 1976. BLM either assumed appellants' lease was in royalty status or assumed that Survey would notify appellants to pay at the higher rental. However, appellants were never informed that they owed rental at the higher KGS rate, due November 1, 1976, to Survey or BLM which led to the reasonable assumption that their lease was in royalty status. We also note that the December 1975 statement of account provided by Survey indicates that some oil was produced and sold from the lease at the end of 1975 and that royalty was paid on the sales. The juxtaposition of this to the letter from BLM would also tend to support appellants' understanding that the lease was in a royalty status.

For the above reasons, we find that appellants had sufficient basis for believing that their lease was in royalty status. Because it appeared the lease was in a royalty status, appellants did not have reason to know that rental was due on or before November 1, 1976. Therefore, their lease should not be deemed to have terminated under 30 U.S.C. § 188(b) (1970). Odessa Natural Corp., supra; Husky Oil Co., supra. Accordingly, we remand the case to the BLM Wyoming State Office to take appropriate steps to reactivate appellants' lease, all else being regular.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case remanded for appropriate action consistent herewith.

Joan B. Thompson
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Joseph W. Goss
Administrative Judge